

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.09.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.No.778 of 1992

Ramasami - D3

.. Appellant

vs.

1. Periammal - 1st plaintiff
2. Chinnammal - 2nd plaintiff
3. Nallammal - D1
4. Samiathal - D2
5. Palanisami - D4
6. Mariappa Gounder - D5
7. Nachappa Gounder - D6 .. Respondents
(RR 4 to 7 remained exparte
and set exparte in the Trial Court
Hence given up)

Prayer: This Appeal has been filed under section 96 of Civil Procedure Code against the Judgment and Decree dated 11.10.1991, passed in O.S.No.197 of 1983 on the file of the Subordinate Court, Dharapuram.

For Appellant : Mr.S.Sethurathinam, Senior Counsel
for Mr.K.Kuppusamy

For Respondents : Mr.S.Venugopal (For R1 & R2)

JUDGMENT

This appeal has been preferred against the decree and judgment passed in O.S.No.197 of 1983 on the file of the Subordinate Court, Dharapuram.

2. The plaint averments in brief are as follows:

2(a) The plaint schedule property originally belongs to Lakshmana Gounder, who is the father of the plaintiffs and the third defendant. The first defendant is the wife of Lakshmana Gounder. The plaintiffs and the second defendant are the daughters of Lakshmana Gounder. Third defendant is the son of Lakshmana Gounder. After the death of Lakshmana Gounder, plaintiffs are each entitled to 1/5 share in the plaint schedule property. The third defendant is

leading a wayward life. Third defendant never allowed the plaintiffs to enjoy the plaint schedule properties, which are self acquired properties of their father Lakshmana Gounder. Third defendant is now attempting to sell the plaint schedule properties which necessitated the plaintiff to send a suit notice on 05.05.1983 to third defendant and other defendants. On 11.5.1983 the third defendant has sent a reply notice wherein he would state that Lakshmana Gounder had borrowed loan and without discharging the said loan he died and that subsequent to the death of Lakshmana Goudner, the third defendant had discharged the said loan, are all false. Lakshmana Gounder had not borrowed any loan during his life time. The third defendant had not given any 'Seervarisai' during the marriage of the plaintiffs. The third defendant is 21 years younger than the plaintiffs. The claim of the third defendant that he was enjoying the plaint schedule properties for the past 14 years adverse to the interest of plaintiffs are all not true. The averments that the third defendant has discharged his father's loan amounting to Rs.15,000/- by selling the jewels of his wife is also a tissue of falsehood. The third defendant has not discharged any loan left by Lakshmana Gounder and there was no necessity for the same because Lakshmana Gounder had not borrowed any loan during his life time. As far as S.No.951 and 953 are concerned third defendant had partitioned the same along with other sharers, but the said partition will not bind the plaintiffs because they are not parties to the said partition. The third defendant has not spent Rs.300/- towards carrying out repairs in the house. There is no mutation effected in the revenue records in respect of the suit properties in the name of the third defendant as contended by him. Hence, the plaintiffs filed the suit claiming their 2/5 share in the suit properties.

3. The third defendant has filed a written statement which was adopted by the first Defendant, reads as follows:

Lakshmana Gounder died in the year 1966 and not in the year 1968 as stated by the plaintiffs. After the death of the father, the plaintiffs have not claimed any right or title in respect of the suit properties. During the life time of the father Lakshmana Goudner he had celebrated the marriage of his three daughters by spending huge amounts and also by providing 'Seervarisai'. After the death of Lakshmana Goudner, third defendant took the possession of the suit properties and he is in exclusive possession and enjoyment of the suit properties. After discharging the loan left by his father Lakshmana Gounder, third defendant has prescribed title to the plaint schedule properties by adverse possession also. The third defendant had discharged the previous loan amount amounting to Rs.15,000/- left by his father Lakshmana Goudner. During the year 1978 itself, the third defendant had partitioned his share in S.No.957/4 along with other share holders and out of his share of 4 acres 5 cents, the third defendant had executed a sale deed in respect of 1 acre 50

cents, within ten days from the partition of S.No.957/4 in the year 1978. The third defendant had also taken a sale deed of 14.07.1975 in respect of one half of the house. The plaintiffs ought not to have included one half of the third defendant's share in the house as a plaint schedule property. In the plaint schedule house, the third defendant has spent Rs.3,000/- towards maintenance and he is paying house tax for the past 12 years. The plaintiffs cannot claim any right or title in respect of the plaint schedule house. The plaintiffs are not entitled to claim any mesne profit in respect of the suit properties. Hence, the suit is liable to be dismissed.

4. The plaintiffs in their reply statement have contended that the alleged partition dated 30.8.1977 will not bind the plaintiffs because the said partition has been effected behind the back of the plaintiffs and they are not parties to it. The alleged settlement deed dated 21.9.1977 also will not affect the interest of the plaintiffs for the suit properties. The plaintiffs were in possession and enjoyment of the suit properties along with the defendants even two years prior to the filing of the suit.

5. The third defendant in his additional written statement has denied the averments in the reply statement filed by the plaintiffs.

6. Defendant 2 & 4 to 6 remain exparte. After going through the pleadings of the respective parties, the learned trial Judge has framed as many as 10 issues and on the basis of the documentary and oral evidence has come to a conclusion that the plaintiffs are entitled to 1/5 share each in the plaint schedule item No.1 & 2 properties purchased by Lakshmana Gounder. Aggrieved by the findings of the learned trial Judge, the third defendant has preferred this appeal.

7. Now the point for consideration in this appeal is whether the findings of the trial Court passing preliminary decree in favour of the plaintiffs are liable to be set aside for the reasons stated in the grounds of appeal?

8. The point:-

8(a) Admittedly, the plaint schedule item No.1 & 2 properties are self acquired properties of late Lakshmana Goudner, the father of the plaintiffs and the third defendant, who is the son of Lakshmana Gounder. The claim of the plaintiffs was resisted by the third defendant on the ground that the plaintiffs are living separately with their husband after marriage and there was no joint possession or enjoyment of the plaint schedule properties along with the third defendant and that the third defendant had purchased one half of the plaint schedule item No.2 house on 14.7.1975 under Ex.B.16-sale deed. Even though plaintiffs claim that Lakshmana

Goudner had purchased item No.2 house to the plaint schedule property, under Ex.B.15-sale deed, Lakshmana Gounder had purchased only one half share in plaint item No.2 house and the remaining one half was purchased by the third defendant under Ex.B.16-sale deed. The learned trial Judge has given a clear finding to issue No.7 to the effect that one half share in item No.2 to the plaint schedule house exclusively belong to the third defendant under Ex.B.16. The learned trial Judge has further held that the third defendant has proved the fact that he had spent Rs.3,000/- for maintaining the house and there was no evidence let in by the third defendant to show that he had made improvements in the plaint schedule properties apart from the said amount of Rs.3,000/- spent by him towards maintenance of the house.

8(b) It is contended by the third defendant that during the year 1978 itself S.No.957/4 property was partitioned between the third defendant and other share holders. Even though on behalf of the third defendant it was contended that the plaint item No.1 & 2 properties were purchased by Lakshmana Goudner by selling the ancestral properties at Amaravathi Palayam, there was no documentary evidence produced to show that only out of the sale proceeds of the ancestral properties, plaint schedule item No.1 & 2 properties were purchased by Lakshmana Gounder. Admittedly, plaintiffs are the daughters of Lakshmana Goudner and it is admitted that Lakshmana Gounder died intestate and that the plaint schedule properties are self acquired properties of Lakshmana Gounder. Even though the third defendant would claim that he is in possession of the plaint schedule properties over the statutory period of limitation, he has not pleaded ouster in his written statement and proved the same.

8(c) The learned trial Court relying on AIR 1981 SUPREME COURT 77 (Karbalai begam Vs. Mohd.Sayeed and another) has come to a correct conclusion that a co-owner cannot set up title without a plea of ouster. Admittedly, plaintiffs 1 & 2 and the second defendant are the daughters of Lakshmana Gounder and the third defendant is the son of Lakshmana Gounder. So after the death of Lakshmana Gounder, plaintiffs are each entitled to 1/5 share in the plaint schedule properties. The learned trial Court has correctly observed in its judgement that the plaintiffs are entitled to claim their respective shares only in respect of the properties purchased by Lakshmana Gounder in plaint schedule Item No.1 & 2 properties. Under such circumstances, I find no reason to interfere with the well considered judgment and decree passed in O.S.No.197 of 1983 on the file of the Subordinate Court, Dharapuram. The point is answered accordingly.

9. In the result, the appeal is dismissed confirming the judgment and decree passed in O.S.No.197 of 1983 on the file of the Subordinate Court, Tharapuram. Considering the close relationship of the parties there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Subordinate Judge,
Dharapuram.

2.The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.S.Venugopal, Advocate Sr 46269

JRG (CO)
km/6.11.

A.S.No.778 of 1992

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